

Fiscal Service, Treasury

§215.3

(h)(1) *Employees* for the purpose of State income tax withholding, means all employees of an agency, other than members of the armed forces. For city and county income or employment tax withholding, it means:

- (i) Employees of an agency;
- (ii) Members of the National Guard, participating in exercises or performing duty under 32 U.S.C. 502; or
- (iii) Members of the Ready Reserve, participating in scheduled drills or training periods, or serving on active duty for training under 10 U.S.C. 270(a).

The term does not include retired personnel, pensioners, annuitants, or similar beneficiaries of the Federal Government, who are not performing active civilian service or persons receiving remuneration for services on a contract-fee basis.

(2) *Employees* for purposes of District of Columbia income tax withholding, means employees as defined in 47 District of Columbia Code 1551c(z).

(i) *Members of the Armed Forces* means (1) individuals in active duty status (as defined in 10 U.S.C. 101(d)(1)) in regular and reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and (2) members of the National Guard while participating in exercises or performing duty under 32 U.S.C. 502 and members of the Ready Reserve while participating in scheduled drills or training periods or serving on active duty for training under 10 U.S.C. 10147.

(j) *Ordinance* means an ordinance, order, resolution, or similar instrument which is duly adopted and approved by a city or county in accordance with the constitution and statutes of the state in which it is located and which has the force of law within such city or county.

(k) *Regular place of Federal employment* means the official duty station, or other place, where an employee actually and normally (i.e., other than in a travel or temporary duty status) performs services, irrespective of residence.

(l) *Secretary* means Secretary of the Treasury or his designee.

(m) *State* means a State, territory, possession, or commonwealth of the United States, or the District of Columbia.

(n) *State income tax* means any form of tax for which, under a State status:

(1) Collection is provided, either by imposing on employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the State or by granting to employers generally the authority to withhold sums from the compensation of employees, if any employee voluntarily elects to have such sums withheld; and

(2) The duty to withhold generally is imposed, or the authority to withhold generally is granted, with respect to the compensation of employees who are residents of such State.

[42 FR 33731, July 1, 1977, as amended at 55 FR 3590, Feb. 2, 1990; 55 FR 7494, Mar. 2, 1990; 71 FR 2150, Jan. 13, 2006]

Subpart B—Procedures

§215.3 Procedures for entering into a Withholding Agreement.

(a) Subpart C of this part is the Withholding Agreement which the Secretary will enter into with a State, city or county. A State, city or county which does not have an existing withholding agreement with the Secretary and wishes to enter into such an agreement shall indicate in a letter its consent to be bound by the provisions of Subpart C. The letter shall be sent to the Secretary by addressing the request to: Assistant Commissioner, Federal Finance, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227. The letter shall be signed by an officer authorized to bind contractually the State, city or county. Copies of all applicable State laws, city or county ordinances and implementing regulations, instructions, and forms shall be enclosed. The letter shall also indicate the title and address of the official whom Federal agencies may contact to obtain forms and other information necessary to implement withholding.

(b) Within 120 days of the receipt of the letter from the State, city or county official, the Secretary will, by letter, notify the State, city or county:

(1) That a Withholding Agreement has been entered into as of the date of the Secretary's letter, or

§ 215.4

(2) That a Withholding Agreement cannot be entered into with the State, city or county and the reason for that determination.

(c) The withholding of the State, city or county income or employment tax shall commence within 90 days after the effective date of the agreement.

[71 FR 2150, Jan. 13, 2006]

§ 215.4 Relationship of Withholding Agreement to prior agreements.

Jurisdictions which requested from Treasury an agreement other than the Withholding Agreement set forth in Subpart C (formerly known as the Standard Agreement) within 90 days after July 1, 1977, which request Treasury subsequently approved, will continue to be governed by such agreement. For all other jurisdictions, the Withholding Agreement set forth in Subpart C replaced all prior agreements between the Secretary and a taxing jurisdiction for the withholding of income or employment taxes from the compensation of Federal employees, and any jurisdiction which was a party to a prior agreement is presumed to have consented to be bound by the Withholding Agreement set forth in Subpart C.

[71 FR 2150, Jan. 13, 2006]

Subpart C—Withholding Agreement

§ 215.5 In general.

This subpart is the text of the Withholding Agreement between the Secretary and the State, city or county. The terms used in this agreement are defined in § 215.2 of this part.

[42 FR 33731, July 1, 1977. Redesignated and amended at 71 FR 2150, Jan. 13, 2006]

§ 215.6 Parties.

The parties to this agreement are the Secretary and the State, city or county which has entered into this agreement pursuant to 5 U.S.C. 5516, 5517, or 5520 and Executive Order 11997 (June 22, 1977).

[42 FR 33731, July 1, 1977. Redesignated at 71 FR 2150, Jan. 13, 2006]

31 CFR Ch. II (7–1–08 Edition)

§ 215.7 Compliance by agencies.

(a) In the case of an agreement with a State, the head of each agency is required to withhold State income taxes from the compensation of:

(1) Employees of such agency who are subject to such taxes and whose regular place of Federal employment is within the State, and

(2) Members of the Armed Forces who are subject to such taxes and who are legal residents of the State.

The foregoing is also applicable with respect to a State whose statutes permit but do not require withholding by employers, provided the employee voluntarily elects to have such tax withheld.

(b) In the case of an agreement with a city or county, the head of each agency is required to withhold city or county income or employment taxes from the compensation of any employee of the agency who is subject to the tax, and

(1) Whose regular place of Federal employment is within the city or county, or

(2) Is a resident of the city or county.

(c) In withholding taxes, the head of each agency, except as otherwise provided in this agreement, shall comply with the withholding provisions of the State, city or county income or employment tax statute, regulations, procedural instructions and reciprocal agreements related thereto.

(Pub. L. 95–365, 92 Stat. 599 (5 U.S.C. 5520))

[42 FR 33731, July 1, 1977, as amended at 44 FR 4670, Jan. 23, 1979. Redesignated at 71 FR 2150, Jan. 13, 2006]

§ 215.8 Withholding certificates.

Each agency may require employees or members of the Armed Forces under its jurisdiction to complete a withholding certificate in order to calculate the amount to be withheld. The agency shall use the withholding certificate which the State, city or county has prescribed. Where the State, city or county has not prescribed a certificate, the agency may use a certificate approved by the Department of the Treasury. The agency may rely on the information in the certificate. Copies